

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TOMAS BERNARDO, DEFENDANT AND APPELLANT.

G.R. No. 6027. April 01, 1911

Ponente: TORRES, J.

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TORRES, J.:

In November, 1907, Tomas Bernardo entered into amorous relations with Isadora Mesina, a minor 18 years of age, and on this account the said Tomas Bernardo frequented the house in which the girl lived; he succeeded in lying with her on the afternoon of March 1, 1909, through promise of marriage, while her father, Saturnino, and her sister, Juliana Mesina, were absent from the house and her mother was in another room attending her sick daughter. As a result of the said relations and of the coition that took place on the afternoon aforesaid, the girl became pregnant and later gave birth to a female child, one month and a half before the hearing in the present case.

For the foregoing reasons, the father of the seduced girl filed a complaint in the justice of the peace court of Mariquina and, as a result of the trial, the accused was sentenced to four months of arresto mayor and to the accessory penalties. An appeal was taken to, the Court of First Instance, and the provincial fiscal, in view of the proceedings before the justice of the peace, filed a complaint, on June 17, 1909, charging Tomas Bernardo with the crime of estupro. The defendant excepted on the ground of lack of jurisdiction, the court overruled the demurrer and declared that it was competent in the matter at issue. The case thereupon came up for trial and, upon the evidence adduced therein, judgment was rendered on March 18, 1910, sentencing the accused to the penalty of four months of arresto mayor, to pay an indemnity of P400 to the offended party, to recognize as his daughter the female child born to the said Isidora Mesina, to pay to the latter P10 a month for the support of the child, and the costs. From this judgment the defendant appealed.

While it is true that the crime of simple, unqualified, seduction is punishable under article 443 of the Penal Code with the penalty of arresto mayor, it is no less true that article 449 of the same code provides that -

"Those guilty of rape, seduction, or abduction shall be condemned also, by way of indemnification: (1) To endow the injured woman, if she were unmarried or a widow; (2) to acknowledge the offspring, if the character of its origin should not prevent it; (3) in all cases, to support the offspring."

These declarations, necessarily required by statute, are not really, in a strict legal sense, accessories of the personal penalty imposed by the Penal Code upon the seducer, but are rather those which the penal law prescribes shall be made by the judge in passing final sentence in the cause, in order that it may be shown that, besides the personal penalty, the accused, in consequence of his crime, has incurred the obligations expressly stated by the said code.

These obligations imposed upon the culprit ordinarily exceed the amount of the penalty fixed by the law as being within the jurisdiction of the justice of the peace court and comprise, moreover, by virtue of the forced recognition imposed by article 135 of the Civil Code, the special determination of the civil status of the offspring which

resulted from the crime, consequently, although the said crime of seduction is only punished by the penalty of *arresto mayor*, a judgment of conviction can not be pronounced by a justice of the peace, on account of his lack of jurisdiction.

But disregarding the amount of the indemnity, whatever it be, according to the conditions and circumstances of the offended party and of the one obliged to furnish the same, which amount might be greater than that fixed by law as within the jurisdiction of justice of the peace courts, the acknowledgment of the resulting offspring, one of the findings which the sentence must contain, establishes by force of law the civil status of the child whose acknowledgment is necessarily imposed upon the guilty party; so with much less reason could the crime fall within the jurisdiction of the justice of the peace court, inasmuch as, in accordance with specific legal provisions, only the judge of the Court of First Instance can make such pronouncements.

Under this hypothesis, the justice of the peace of Mariquina was not competent and could not possibly have had jurisdiction to hear and try the case for the crime of seduction brought before him by Saturnino Mesina, the father of the offended girl, Isidora Mesina, as he did, rendering judgment on June 10, 1909, with the findings recorded on folio 7 of the trial record; and therefore, all the proceedings had in the said case, together with the judgment, are null and void, and the judge of the Court of First Instance, before whom the case came on appeal by the accused, should have dismissed the same, as it was an action that was null and unsustainable for the reasons aforementioned; hence he could not legally have considered the complaint filed by the provincial fiscal by reason of the said appeal of the accused, inasmuch as, in order to try the crime which was the subject of that complaint, the judge of the Court of First Instance had to act by virtue of his original jurisdiction; in the present case he could not lawfully do so because that complaint was founded on the action tried before the justice of the peace which had come to the Court of First Instance on appeal, and the judge of First Instance had to hear and try the case by virtue of the jurisdiction which he had acquired by reason of the appeal pending in second instance. It would be improper to conclude that the said judge exercised the attributes of both courts at the same time by virtue of his original jurisdiction and of the appeal.

After the case had been dismissed, and the proceedings had before the justice of the peace, together with his decision in the matter, had been declared null and void, the judge of First Instance, in the exercise of his original jurisdiction, could have given, in accordance with the law, due course to the complaint which would then have been presented by the provincial fiscal independently of the aforesaid proceedings, which were improperly instituted owing to the absolute lack of jurisdiction on the part of the justice of the peace to hear and try causes for the crime of seduction, for the reasons herein before set forth.

In the case of *Carroll and Ballesteros vs. Paredes*,^[1] on the petition for a writ of certiorari, the judgment, dated September 26, 1910, contained the following statements:

"* * * Appealed criminal cases 'shall be tried in all respects anew.' De novo, over again. The nature of the action can not be changed in the Court of First Instance, but must be tried de novo upon its merits on the same process and pleadings; that is, the process and proceedings must be of the same nature as those in the justice of the peace court. The prosecuting officer, however, can substitute his own complaint for that filed in the justice of the peace court, provided the nature of the action is not changed. In this jurisdiction no provision is made for an appeal from justice of the peace courts upon the law only, but all appeals are taken for a new trial, and the defendant is entitled to interpose the same objections as he could have interposed in the justice of the peace courts.

"If the sentence imposed upon him by the justice of the peace is void for want of jurisdiction of the subject matter, the defendant, on appeal, has a right to have the appellate court so determine, or he may elect to have the Court of First Instance try the case upon its merits, without raising the question of the jurisdiction of the

justice of the peace: If he raises no objection with reference to the jurisdiction of the justice of the peace and submits himself to be retried for the crime for which he was charged, then he will be presumed to have waived all questions as to jurisdiction, and he can not thereafter raise this question of jurisdiction, provided the appellate court had jurisdiction of his person and the subject matter. But should he make a timely objection in the appellate court as to the want or excess of jurisdiction of the justice of the peace, and should the court find such objection well founded, then it acquires jurisdiction only for the purpose of dismissing the same, without prejudice however to the institution of a new proceeding for the same criminal acts in the proper tribunal. But in order to take advantage of these rights the appellant must by proper objection call the attention of the court to these facts and give the court an opportunity to pass upon the validity of such sentence; otherwise he will be, as we have said, presumed to have waived the question of jurisdiction. No agreement of the parties, or waiver of objection, can confer jurisdiction on an appellate court which has no jurisdiction of the subject matter. * * *

"In 24 Cyc, 641, it is said:

" 'On appeal from a justice of the peace, the appellate court has only such jurisdiction as the justice had, and if he had no jurisdiction, the appellate court acquires none; and it is immaterial that such court has original jurisdiction of the subject matter of the action.'

"A number of cases from various States in the American Union are cited in support of this proposition. It must be noted that this rule is based upon the theory that the appellate court had jurisdiction of the subject matter of the action.

"On page 643 of the same volume (24 Cyc.) it is said:

" 'While it has been held that, where the justice of the peace had no jurisdiction of the subject matter of an action, the parties can not confer jurisdiction on the appellate court by consent, the better view seems to be that where the appellate court has original as well as appellate jurisdiction of the cause, jurisdiction of both the subject matter and the person may be conferred upon it by waiver or consent.' (Citing cases from Alabama, Colorado, Indiana, Iowa, Kentucky, Michigan, Minnesota, and Ohio.)

" 'The question of want of jurisdiction may be raised by motion to dismiss the proceedings, or by objecting at the trial to the introduction of any evidence on behalf of plaintiff.' Id.

* * * * *

"2. That in a criminal case where a justice of the peace renders a judgment wherein he does not have jurisdiction of the person of the defendant and the subject matter of the action, and an appeal is taken to the Court of First Instance, and no objection is interposed in the said Court of First Instance as to the jurisdiction of the justice of the peace, then the defendant will be presumed to have waived all objections to such jurisdiction and the case can be tried upon its merits: Provided, however, That the nature of the action is not changed and that the said Court of First Instance had jurisdiction of the subject matter of the action; but when a timely objection is made to the jurisdiction of the appellate court (Court of First Instance) to try such case on its merits, the said court only acquires jurisdiction to dismiss the case; * * *" (p. 108).

For the reasons herein before stated and those contained in the above citations it has been demonstrated that the Court of First Instance, in the exercise of its appellate jurisdiction, could not validly take cognizance of a crime which was the subject matter of an action and judgment in the justice of the peace court that were null and void for want of jurisdiction, by virtue of a complaint filed by the provincial fiscal in the said Court of First Instance in view of said action, before the latter had dismissed the appeal interposed by the accused on the ground of the manifest nullity of the trial.

All the proceedings had in the present cause, together with the sentence therein pronounced, are declared to be null and void, and the Court of First Instance shall act in accordance with the law with respect to the proceedings

of the justice of the peace court of Mariquina. The costs are declared de oficio. So ordered.

Arellano, C. J., Mapa and Johnson, JJ., concur.

Carson and Trent, JJ., dissent.

[1] 17 Phil. Rep., 94.

DISSENTING

MORELAND, J.,

I do not believe that the doctrine laid down in the prevailing opinion in this case is sound. The position of the majority of the court is that courts of justice of the peace have no jurisdiction over the crime of seduction because of that provision of the law by which the court must, in addition to the imprisonment which the accused must suffer, require him to acknowledge and maintain the offspring and to compensate (endow) the mother for the wrong done her. It is admitted that but for these requirements the court would have jurisdiction of this cause inasmuch as the penalty imposed (arresto mayor) can not exceed six months' imprisonment. The theory of the court is that the requirements above mentioned are a part of the punishment; and this being true, and it being also true that courts of justice of the peace are not authorized to impose any other punishment than imprisonment or fine, or both, the necessary result is that the provision of the law requiring the court to order the accused to acknowledge and maintain the offspring and to endow the injured woman carries the cause beyond his jurisdiction. If this be so, then there is an end of courts of justice of the peace so far as their most important criminal jurisdiction is concerned; for the Penal Code requires (arts. 17, 119 to 126) and this court has repeatedly held that, in addition to the penalty imposed as punishment, every court shall also require the accused, in all cases where an actionable injury has been sustained by the commission of the crime, to make (1) restitution, or (2) reparation for the damage caused, or (3) indemnification for losses caused by the commission of the crime.

While it may be true that an indemnification or a reparation is a part of the punishment in the sense that such indemnification or reparation is not a contractual obligation and therefore imprisonment for failure to pay a sum assessed by the court as an indemnification or reparation is not an imprisonment for debt (U. S. vs. Freeman, 217 U. S., 639), nevertheless it is equally undoubted that in the real sense, in the true legal sense, a requirement that the accused, in a case of seduction, for example, shall acknowledge and maintain the offspring and suitably endow the mother, is an obligation which may be enforced in a civil action and is simply and solely an indemnification or reparation for damages suffered by reason of the crime committed. This is evident from the provisions of article 449 of the Penal Code which follows:

"Those guilty of rape, seduction, or abduction shall be condemned also, by way of indemnification: 1. To endow the injured woman, if she were unmarried or a widow; 2; To acknowledge the offspring, if the character of its origin should not prevent it; 3. In all cases, to support the offspring."

It being entirely clear that this article seeks merely reparation or indemnification, and punishment only by indirection, if at all, it follows necessarily that, if such courts can not, in their judgments of conviction, require the reparation or indemnification provided in cases of seduction for the reason that they have no jurisdiction to do so, by parity of reasoning, they can not require it in any other case where the acts constituting the crime have caused an actionable injury. There is not the slightest difference, legally or morally, between requiring an accused to support a child and indemnify the woman he has grossly abused, and requiring a thief to pay to a person robbed

the value of the property stolen, or compelling a person convicted of assault and battery to pay a certain sum as an indemnification to the person injured thereby. If he lacks the power in the one case, he lacks it in the other. The law imposes the duty and obligation on every court, in proper cases, not only to convict, but also to require the accused to repair the damage done - to indemnify. If the imposition of the indemnity or the obligation to repair carries the cause beyond their jurisdiction, then courts of justice of the peace have no jurisdiction over any criminal cause where there results from the commission of the crime actionable injury. This can not but be so, inasmuch as the duty to require indemnification or reparation is laid upon them in every criminal case of that character.

Even though the law did not absolutely require such court to impose indemnification or reparation, still there could not be the slightest question that, if he had jurisdiction, he might do so; and this court has uniformly held that the jurisdiction of courts of justice of the peace in criminal cases is determined by the maximum and not the minimum penalty prescribed by law as punishment for the crime. If the maximum penalty, therefore, is not six months' imprisonment and P200 fine, but six months and P200 and indemnification, such courts fail wholly of jurisdiction.

Let us suppose that an accused is brought before a court of justice of the peace charged with the theft of a ring worth ten pesos. The ring can not be found. The accused pleads guilty. Is it not the manifest, is it not the imperative, duty of the courts under the uniform holding of this court, to require the accused to indemnify the person robbed in the sum of PIO? Article 17 of the Penal Code provides:

"Every person criminally liable for a crime or misdemeanor is also civilly liable."

Articles 119 to 122 read as follows:

"ART. 119. The civil liability, established in Chapter II, Title II, of this book, includes: (1) Restitution; (2) reparation for the damage caused; (3) indemnification for losses.

"ART. 120. The restitution of the thing itself must be made, if possible, with payment for deteriorations or diminution of value, to be appraised by the court.

"Restitution shall be made, even though the thing may be in the possession of a third person, who had acquired it in a legal manner, reserving, however, his action against the proper person.

"This provision is not applicable to a case in which the third person has acquired the thing in the manner and with the requisites established by law to make it unrecoverable.

"Art. 121. The reparation shall be made by the appraisal of the amount of damage by the court, taking into consideration the value of the thing, whenever possible, and the value as a keepsake to the party aggrieved.

"Art. 122. Indemnification for losses shall include not only those which may have been caused the aggrieved party, but also those that may have been inflicted upon his family or upon a third person by reason of the crime.

"The court shall regulate the amount of such indemnification upon the same terms as prescribed for the reparation of damage in the foregoing article."

Under these articles it has been, generally speaking, the uniform practice of all the courts of the Islands to require the accused, when convicted, to restore, to indemnify, or to repair; and this court, whenever the lower courts have failed to include in their judgments of conviction one or another of these requirements, has, on appeal, modified such decisions by inserting in their judgments such requirement, (U. S. vs. Celis, 8 Phil. Rep., 408; Varela vs. Finnicks, 9 Phil. Rep., 482; U. S. vs. Guy Sayco, 13 Phil. Rep., 292, and numerous other cases.)

Under the doctrine of the prevailing opinion, the court of justice of the peace, in the illustration above given, would be wholly without jurisdiction of the crime, as his power to punish is, by that decision, limited to six months' imprisonment and a fine of P200; and as the law requires of the court that it also indemnify to the amount of the P10, a thing wholly outside of and in addition to the fine and imprisonment, he has no power to effect such indemnification. The requirement that the court compel the accused to indemnify in cases of seduction is no more mandatory or imperative than that he compel indemnity in cases of theft. But even if it were the jurisdiction of the court is determined, as we have already said, by the maximum penalty which is imposed by the law, and not by the minimum penalty. Such jurisdiction is determined not by the penalty which the court may impose, but by that which the law says must be imposed as the highest penalty. This has been held many times by this court. The law provides that, in case of theft, for example, the court of justice of the peace must impose not only the penalty prescribed by law, which may be the maximum penalty, but also an indemnity. The theory of this court being that an indemnity is a part of the penalty, and that the jurisdiction of courts of justice of the peace is determined by the penalty, it necessarily results that said courts can have absolutely no jurisdiction where they are required to impose an indemnity, or where, under the law, they may impose it. This applies also to restitution and reparation. Thus are those courts, by the doctrine presented in the prevailing opinion, shorn of substantially all of their important criminal attributes.

Admitting that the indemnification required in cases of seduction is a part of the punishment, in the sense claimed in the prevailing opinion, still it does not follow that a court of justice of the peace has no jurisdiction to impose it. It is neither a fine nor an imprisonment in any legal sense. Section 4 of Act No. 1627 provides:

"SEC. 4. Jurisdiction to try and sentence. - Justices of the peace, except in the city of Manila, shall have original jurisdiction to try parties charged with misdemeanors, offenses, and infractions of municipal ordinances, arising within the municipality, in which the penalty provided by law does not exceed six months' imprisonment or a fine of two hundred pesos, or both such imprisonment and fine * * *."

It would be going a long way to say that an indemnification or a restitution or a reparation is a fine or an imprisonment under any definition found in the criminal law of any country. The jurisdiction of the court is determined by the amount of the fine and imprisonment. An indemnification for a reparation or a restitution is merely an incident of the crime. The jurisdiction of the court is not fixed by the incident but by the nature of the crime itself. Legally speaking, the nature of the crime is determined by the punishment imposed. Whether a crime is a felony or a misdemeanor, infamous or not infamous, depends upon the nature and extent of the punishment imposed for the commission of such crime. It is the nature of the crime as expressed by its maximum penalty, the fine and imprisonment imposed by the law, which determines jurisdiction. The civil, though tortious, incident, the loss to the individual affected by the crime, has nothing whatever to do with jurisdiction. It had its part in influencing the minds of the lawmakers when they were seeking an adequate punishment for the crime. But when the legislature had acted and fixed the punishment by its law, the civil incident, the loss to the person injured by the crime, ceased to have any influence whatever on the punishment imposed. The jurisdiction of courts of justice of the peace over crimes being determined exclusively by the amount of the fine and imprisonment imposed by law, that is, by the legal nature of the crime, and in no manner and to no extent whatever by the civil incidents which accrue to the person injured by the commission of said crime, such courts have jurisdiction of the crime presented in the case at bar, the punishment prescribed by law for such crime being simply *arresto mayor*.

As I have before intimated, indemnification (I use this word to include reparation and restitution) is not a part of the punishment, as that word is used in the Penal Code. We have already seen that articles 17, 119-126 of the Penal Code speak of a civil liability only. Chapter II, Title II, of which article 17 is the first article, is headed by the words, in capital letters, "Persons civilly liable for crimes and misdemeanors." Title IV, which is composed of articles 119- 126, has these words at its head: "Civil Liability." The fact that the law relating to the civil liability

resulting from the commission of crimes and misdemeanors is found in the Penal Code and goes conjoined with the law relating to criminal liability, and that both are determined in the same action at the same time and in the same judgment, is due to the legal system rather than to the nature of those liabilities or their relation to each other. Under that system the criminal action for punishment by the people and the civil action for damages by the person injured by the commission of the crime were conducted together. This was not only a matter of convenience. It appears to have been a necessary result of that principle of Spanish law which determined that an acquittal of one charged with a crime was a bar to a subsequent civil action founded on the same acts. The fact that it was so done did not signify that the judgments resulting from these two kinds of liability were both punishments for the crime. It did not mean that they bore any such relation to each other. The Penal Code continually distinguished as it now distinguishes the two kinds of liability, invariably speaking of the one as criminal and the other as civil liability. Not for a moment are they confused. They are always dealt with separately. It is provided that the injured person may, if he chooses, come into court and renounce his right to damages; and such renunciation will preclude the court from imposing the corresponding indemnification. Article 23 of the Penal Code provides that "civil liability with regard to the interests of the party condoning an offense is extinguished by express renunciation." It is provided also that the injured person may compromise with the accused the civil liability under which he lies and that such compromise will relieve the accused from the imposition of an indemnity. (Civil Code, art. 1813; Penal Code, art. 23; U. S. vs. Montaner, 8 Phil. Rep., 620; U. S. vs. Leano, 6 Phil. Rep., 368; U. S. vs. Guzman, 1 Phil. Rep., 138; U. S. vs. Zamora, 2 Phil. Rep., 582; U. S. vs. Mendezona, 2 Phil. Rep., 353.) On the other hand, no compromise may be made with respect to the criminal responsibility. (See authorities just cited.) Moreover, the rules which govern the extinction of the civil liability are entirely different from those which control the extinction of the criminal liability. Article 133 of the Penal Code provides that "civil liability arising out of crimes or misdemeanors shall be extinguished in the same manner as other obligations, in accordance with the rules of the civil law." No accessories are attached to the civil liability; and it does not carry with it the same kind of punishment which follows the criminal responsibility.

Again, articles 25 to 27, inclusive, compose Chapter II of Title III of Book I, of the Penal Code. That chapter deals exclusively with the "classification of penalties." In that chapter every penalty known to the criminal law, as such, is described by name. The succeeding chapter deals with the "duration and effect of penalties." Nowhere in these two chapters do we find indemnification classified as a penalty.

This court has held; times without number, that the jurisdiction of courts of justice of the peace, as well as Courts of First Instance, is determined by the fine said imprisonment prescribed by law. (Legarda vs. Valdez, 1 Phil. Rep., 146.) This court has also, held many times that courts of justice of the peace have jurisdiction in all cases where the punishment imposed is *arresto mayor* in any or all of its grades. Section 108 of the Code of Criminal Procedure provides that "the criminal jurisdiction of justices of the peace is extended to all offenses which the Penal Code designates as punishable by *arresto mayor* in all its grades."

All of this goes to show that, while the two proceedings, civil and criminal, under the Spanish system, progress side by side and are terminated at the same time and by the same judgment, they have been and are, nevertheless, considered as entirely different proceedings which, while having a common origin, present naught else in common; that, while joined in practice, they are wholly separate in nature.

Nor is this in conflict with the case of U. S. vs. Freeman, above cited. In that case the only question before the court was whether or not imprisonment imposed by reason of a failure to pay an indemnity was imprisonment for debt and therefore in violation of the provisions of the Act of July 1, 1902. Inasmuch as the Supreme Court of the United States has uniformly held that the provisions referred to relate and refer only to "liabilities arising upon their contracts" (McCool vs. State, 23 Ind., 127, 129; Musser vs. Stewart, 21 Ohio State, 353; Ex parte Cottrell, 13

Neb., 193; In re Ebenhack, 17 Kan., 618, 622), the only question presented in that case for decision was whether the obligation to indemnify was or was not contractual. It clearly not being contractual, the cause was fully resolved. The question whether or not indemnification was a part of the criminal penalty was not involved and was not discussed. Those expressions which refer to the indemnity, or "the imposition of the money penalty," as being a part of the "punishment" do not militate against this assertion. Punishment is not necessarily a penalty; and if it were, the phrases in which the word was used were written for the purpose only of indicating the difference between such an indemnity or money penalty and a contractual obligation, and in no wise to demonstrate that such a money penalty was a criminal penalty or punishment.

The prevailing opinion lays great stress on the fact that, under article 449, above quoted, the court is required to adjudicate the civil status of the offspring, arguing that a matter so important as the civil status of a person ought not to be lodged in a court of justice of the peace. I do not think that this contention has any force. In the first place, it must be presumed that the lawmakers, in giving courts of justice of the peace jurisdiction of certain crimes, among them seduction, knew what punishments the law had prescribed for said crimes and what their civil incidents were. They would not have based their grant of jurisdiction over said crimes upon the fine and imprisonment prescribed for each and then have immediately avoided that grant by the necessity of imposing the consequences of the civil incident. The lawmakers knew that they had created laws which not only punished crimes by fine and imprisonment, but gave them civil incidents also, indemnification for which must be imposed at the same time and in the same judgment with the fine and imprisonment. Knowing this, is it not absurd to say that they based the jurisdiction of courts of justice of the peace wholly upon the fine and imprisonment, knowing that their work would be utterly in vain inasmuch as such jurisdiction would be instantly divested by the necessity of imposing an indemnification founded upon the civil incident? It would be utter folly for the lawmakers solemnly to create a law giving a court jurisdiction over a certain class of crimes, well knowing that it had already enacted a law which would render it utterly impossible for such courts to assume the jurisdiction thus solemnly tendered. In other words, it would be puerile for the Philippine Commission to pass a law giving a justice jurisdiction of all crimes the penalty for which does not exceed six months and P200, well knowing at the time that such courts could not possibly assume such jurisdiction by reason of another law previously, or at the time, enacted by the same Commission providing for restitution, reparation, or indemnification by the criminal. It would be a violence to the good sense of the Philippine Commission to assert that by one law it gave the courts of justice of the peace jurisdiction over the crime committed by stealing a ring worth P10, and then instantly, by the same or another law, took away that jurisdiction by obliging the courts in their judgments of conviction to require the accused to restore the ring or pay its value to the owner. It is not reasonable to say that the Philippine Commission gave jurisdiction with one hand and on the same instant took it away with the other. Cognizance of the crimes in which the criminal is required to indemnify, to restore, or repair constitutes by far the most important part of the criminal attributes of courts of justice of the peace. If such courts have not jurisdiction of these crimes, then their usefulness as inferior criminal tribunals is almost at an end. In order to sustain the theory of the majority opinion, it must be held that the legislature perpetrated this absurdity.

In the second place, when the legislature gave jurisdiction over a specific and well-defined class of crimes, namely, all those the punishment for which did not exceed a fine of P200 and an imprisonment of six months, it must necessarily be presumed that it gave the court at the same time jurisdiction and power to handle every incident of that crime. The crime itself contains and embraces all of its incidents. No incident is greater than the act which caused it; and no number of incidents can be greater than the crime which they compose. Jurisdiction over the crime is inevitably jurisdiction over every incident of that crime. While this might not be true under American jurisdiction, it is true here where the penal law requires, and this court has repeatedly sustained such requirement, that the same judgment which imposes fine and imprisonment for the crime shall also impose upon

the culprit restitution, reparation, or indemnification as the incidents of that crime. To say that jurisdiction is determined by the incident of the crime and not by the crime itself, as that crime is defined by its criminal penalty, is not only to overrule and override the plain and explicit provisions of the statute law, but is to make the part far greater than the whole. Nowhere does the statute provide that the jurisdiction of a court of justice of the peace shall depend upon the civil incidents of a criminal act. The exact and express contrary is the plain wording of the law. It provides that the jurisdiction shall depend solely and exclusively upon the fine and imprisonment, those things which the people exact from a criminal in satisfaction of their outraged law in payment for the damage done to society, and not upon the civil incidents of the crime, those things in which the public, or society, has no interest as such. To hold that the civil incident determines whether the court of justice of the peace or the Court of First Instance has jurisdiction, and not the punishment which society metes out to the malefactor, is to reverse the jurisprudence of the criminal law.

In the third place, if the legislature had not intended to give courts of justice of the peace jurisdiction over the incidents of the crime as well as the crime itself, it would unquestionably have said so. Upon what rational theory may we hold that the legislature said to a court of justice:

"You shall have and must take jurisdiction of all crimes where the punishment prescribed does not exceed a fine of two hundred pesos and imprisonment for six months. In all those crimes, in addition to this penalty, you shall impose also on the culprit indemnification; but if you do impose indemnification you lose jurisdiction of the crime."

The civil jurisdiction of a court of justice is confined to causes where the amount in controversy does not exceed P200. Yet the fact that, in an action of forcible entry and detainer, he might be required to render a judgment for P10,000 or more does not deprive him of jurisdiction of that action. He has complete jurisdiction to enter judgment in any amount. On the same principle, such court, having jurisdiction of the crime of seduction by virtue of the character of the criminal penalty prescribed by the law, is not deprived of jurisdiction thereof, simply because he may possibly be required to impose an indemnification of one or a thousand pesos or require an acknowledgment of parentage of the offspring and the maintenance of the same. The legislature had these things in mind when it gave that court jurisdiction of the crime. In most of the States of the Union justices of the peace have jurisdiction of bastardy proceedings and are competent to do the very things which are held to be beyond their jurisdiction by the prevailing opinion.

I can not insist too strongly on the proposition that it is the fine and imprisonment which determines jurisdiction, and not the civil incidents. The civil incident is in no sense a fine or imprisonment. Imprisonment may result from its imposition in terms of money; but it is not imprisonment as that term is used and understood in the criminal law. Certainly it is not the "six months' imprisonment" contemplated by the statute, which is one of the constituent elements determining jurisdiction. If the incidents of a crime are of so grave and important a character that a court of justice of the peace ought not to be permitted to deal with them, then the acts which gave them birth ought to be so qualified by law that such court would have no jurisdiction of the crime which those acts constitute. The punishment of crime is largely determined by the amount of damage or extent of the injury generally caused by its commission. One of the strongest elements going to influence the mind of the legislature in prescribing an adequate punishment of a crime is the injury which the commission of that crime usually causes. In fixing the punishment for the crime of seduction, the legislature fully considered the injury which the commission of that crime would generally cause and was fully aware of all the deplorable results which might follow it. Yet, knowing all this, it deliberately prescribed the penalty of arresto mayor. This, upon the face of the law, gave courts of justice of the peace jurisdiction over it. May we now say that the legislature did not fully appreciate the consequences of this crime and that it erred in giving such courts jurisdiction thereof; that the crime was more serious than the lawmakers believed it to be and that it should have been placed under the control of a higher

tribunal? Can we say that it is more important to protect the rights of the person injured by the commission of the crime than to protect those of society itself? May we say that in cases of seduction the interests of society are safe with a justice of the peace but justice requires that the interests of the injured party be submitted to a more competent tribunal?

As we have seen, courts of justice of the peace have jurisdiction of all offenses where the penalty prescribed by law does not exceed six months' imprisonment and a fine of P200. The statute [Act No. 136, sec. 56] defining the criminal jurisdiction of Courts of First Instance is merely the complement of that prescribing the jurisdiction of courts of justice of the peace. It follows:

"Courts of First Instance shall have original jurisdiction:

* * * * *

"(f) In all criminal cases, in which a penalty of more than six months' imprisonment or a fine exceeding two hundred pesos may be imposed."

These two courts, justice of the peace and First Instance, can not have jurisdiction of the same crimes concurrently. If one has it the other does not. If the Court of First Instance has jurisdiction there is an end of the matter so far as the court of justice of the peace is concerned. If the latter court has it the question is closed so far as the Court of First Instance is concerned. The jurisdiction of each depends not upon the civil incidents of the crime but upon the criminal penalty prescribed for the crime; upon the damage done to society and not to the damage done to an individual. The injury to the individual is, from the stand-point of society, merely an incidental matter; and while the crime and its incidents run along together in the same case, at the same time and before the same court, this circumstance in no way alters their natures or relations. The incidents were taken into consideration when the act which created them was made a crime and punished in accordance with those incidents. They, having entered as the most potential factor into the determination of the penalty which should be imposed for the act causing them, can not again exercise that influence by determining what court shall have jurisdiction of the crime which they had so great a part in making. They can not weigh twice against the accused by becoming a part of the penalty, the nature, measure, and extent of which they were the greatly predominant factors in prescribing. These incidents really determined, in the minds of the lawmakers, what the penalty of the crime should be. Is it logically or legally possible that they may now become a part of that same penalty? The legislature, as we have said before, in determining the punishment which ought to follow a given wrongful act, views the results or incidents which generally follow the commission of that wrongful act, and, from those results, and almost wholly by reason of them, fixes the criminal penalty in accordance therewith. The culprit, having suffered such criminal penalty, has been once punished criminally by reason of those incidents. If, therefore, it be held that those incidents again enter into his case as a part of the criminal penalty, he has been punished by society twice for the same act. It may be said, to be sure, that he ought to suffer again for the injuries inflicted on the individual and that in substantially all of the American States he may be imprisoned under a body execution issued upon a judgment obtained in a civil action of tort founded upon such injuries. That is true. But the point is that he does not again suffer criminally. He suffers civilly only. My point is that, if indemnification or reparation is a part of the penalty, as claimed by the majority of the court, then those incidents have twice been used to the same end - once in determining, through their influence on the lawmakers, the amount of the penalty, and once as a part of the penalty. While the time of imprisonment may be the same under the two theories, the character of the imprisonment is wholly different. It may be said that the practical result is about the same. But the principle is, nevertheless, vicious in the extreme. Moreover, it may well be doubted whether the practical results are the same. If the "incidents" are a part of the penalty, then in many cases, as in the one at bar, the jurisdiction, and consequently the trial, is changed from the court of justice of the peace to the Court of First Instance. Instead of

being tried in his own locality, where he is known, where he has lived his life, where his reputation has been made, and in the home of all his witnesses, the culprit must stand his trial in the distant capital of the province, where he is wholly Unknown, whereto all his witnesses must be taken, and where the expenses of his trial are greatly increased. Not only this. The costs of court which, if convicted, he must pay either in money or in jail, are much greater. The same may be said in relation to his appeal and the expenses incident thereto. Instead of taking his appeal from the judgment of the court of justice of the peace to the Court of First Instance of his own province, he is obliged to take it from the latter court to the Supreme Court at Manila. The additional hardship and expense are manifest. All these things mean that the expenses of his defense are greatly augmented and the time of his imprisonment appreciably increased, all because of the improper holding that indemnification and reparation are a part of the penalty that determines jurisdiction, thereby removing the cause from the cognizance of courts of justice of the peace to those of First Instance.

For these reasons, I dissent.

Proceedings and judgment declared null and void.

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